THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

+Writ Petition No.550 of 2006

% 22.08.2007

Between:

Mr.K.N. Kumar

…Petitioner

And

The District Registrar of Assurances,
Hyderabad.

…Respondents

! COUNSEL FOR PETITIONER: Sri K. Manikyala Rao,

^ COUNSEL FOR RESPONDENTS: G.P. for Revenue

Sri C. Kodanda Ram for R-3

< Gist:

> Head Note:

? CITATIONS:

1) AIR 1954 Andhra 20
2) AIR 1960 M.P 3
3) AIR 1972 Assam & Nagaland 15
4) 2006 (6) ALT 523 (FB)

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JUDGMENT:

Petitioner challenges the action of the 1st respondent in not entertaining a petition filed under Section 23-A of the Registration Act,

1908 (for short '*the Act*'). The facts, that led to the filing of the writ petition; are as under:

The 2nd respondent by name, S.Ramachandra Reddy, was the owner of plot No.84-C in Sy.No.102/1 of Venkateswara Colony, Road No.12, Banjara Hills, Hyderabad. Petitioner claims to have entered into an agreement of sale with the 2nd respondent, on 01-07-1991, to purchase the plot for a consideration of Rs.1,05,000/-. It is stated that a sum of Rs.5,000/- is paid, as an advance.

The 3rd respondent is the wife of the petitioner. It is asserted that, on account of his being employed in the Indian Administrative Service in Meghalaya State, he handed over the balance of consideration of Rs.1,00,000/- to his wife, the 3rd respondent, to be passed on to the 2nd respondent, so as to enable the latter, to execute the sale deed. On 12-08-1991, the 2nd respondent executed a sale deed in favour of the 3rd respondent.

Petitioner states that he submitted an application in the year 2005 to the Government of Meghalaya, for sanction of Rs.2.5 lakhs, as house building loan, by mortgaging the plot, and at that time, it was noticed that the sale deed was executed in the name of the 3rd respondent, instead of himself. He submitted an application under Section 23-A of the Act, enclosing an affidavit before the 1st respondent, stating the facts referred to above, and ultimately requested that the sale deed dated 12-08-1991 be re-registered.

The 1st respondent addressed a letter dated 17-11-2005, stating that the application of the petitioner, for re-registration of the document, cannot be entertained, since it was presented by the executant himself.

Though the 2nd respondent was served with the notice, he has

not chosen to enter appearance. No counter-affidavits are filed by respondents 1 and 2.

The 3rd respondent filed a counter-affidavit, denying the allegations of the petitioner. According to her, the 2nd respondent was the G.P.A. of the original owner, one Mr.Tuljaram, and it is she, who paid the entire consideration of the property. She has also stated the manner in which, she has pooled up the resources.

Sri K. Manikyala Rao, learned counsel for the petitioner, submits that in the sale deed dated 12-08-1991, there is a specific agreement to the agreement of sale, which is obviously, dated 01-07-1991. According to him, due to inadvertence or misrepresentation, the 2nd respondent executed the sale deed in favour of the 3rd respondent, instead of the petitioner. He submits that, even the reply given by the 1st respondent is contrary to the provisions of the Act, and the request of the petitioner ought to have been acceded to.

Learned Government Pleader for Revenue, on the other hand, submits that the occasion to re-register a document, under Section 23-A of the Act, would arise, if only the initial document was executed by a person, who is not competent, and such a situation does not exist in the present case. He further contends that the application submitted by the petitioner is clearly barred by time, as stipulated under Section 23-A of the Act.

Sri C. Kodanda Ram, learned counsel for the 3rd respondent, submits that his client purchased the property with her own funds and the claim made by the petitioner is without any basis. He further points out that, even if there is any semblance of truth, of what is pleaded by the petitioner, he has to seek necessary declaration in a Civil Court, and thereafter, approach the 1st respondent, if it is otherwise permissible in

law.

The question, as to whether the 2nd respondent himself was the owner, or he was only a G.P.A. of another, by name, Tuljaram, does not assume much of significance, in the limited context of this case. The petitioner asserts that he entered into an agreement with the 2nd respondent, on 01-07-1991, to purchase the property, and paid the balance of consideration through his wife, the 3rd respondent. There is nothing on record to evidence, as to what transpired between the petitioner and the 2nd respondent, assuming that the agreement dated 01-07-1991 is genuine. It was nearly one-and-half decades, that the petitioner approached the 1st respondent with a prayer to re-register the document, under Section 23-A of the Act. For better appreciation of the matter, it is necessary to extract Section 23-A of the Act.

> "**Sec. 23-A**:**Re-registration of certain documents**:-
>
> Notwithstanding anything to the contrary contained in this Act, if in any case a document requiring registration has been accepted for registration by a Registrar or Sub-Registrar from a person not duly empowered to present the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented, in accordance with the provisions of Part VI for re-registration in the office of the Registrar of the district in which the document was originally registered; and upon the Registrar being satisfied that the document was so accepted for registration from a person not duly empowered to present the same, he shall, proceed to the re-registration of the document as if it had not been previously registered, and as if such presentation for re-registration was a presentation for registration made within the time allowed therefor under Part IV, and all the provisions of this Act, as to registration of documents, shall apply to such re-

registration; and such document, if duly re-registered in accordance with the provisions of this section, shall be deemed to have been duly registered for all purposes from the date of its original registration:

Provided that, within three months from the twelfth day of September, 1917, any person claiming under a document to which this section applies may present the same or cause the same to be presented for re-registration in accordance with this section, whatever may have been the time when he first became aware that the registration of the document was valid".

It is not uncommon that documents are executed by persons under *bona fide* impression, that they are competent to do so.

In case, it emerges that the executant was not competent and legally entitled to sign the document, two options are open:

the first is that, a suit for cancellation of the document has to be filed, under the relevant provisions of the Specific Relief Act, and the second is that, the deed of cancellation has to be executed with the participation of the concerned parties. It is after such an exercise, that the transaction has to be brought about, with the execution of a document, by a person, who is found to be competent. When there is unanimity of opinion among the concerned persons, requiring them to undergo the ordeal, referred to above, would cause unnecessary hardship and undue delay. It is to obviate the same, that the Parliament enacted Section 23-A of the Act. It provided the facility of re-registration of the document, executed by the correct and proper person, and such re-registration would wipe away the invalidation attached to the document, executed earlier. The conditions to avail this facility are that,

a) the person, who executed the document, was not properly

empowered;

b) the request is made for re-registration of the document within the date on which such a defect was noticed, and

c) there is unanimity among the parties to the transaction,

as to the lack of competence of the person, who initially executed the document, as well as about the competence of the other identified individual, to execute it afresh.

To avail the facility, or remedy, under Section 23-A of the Act, it was necessary for the petitioner to plead that the 2nd respondent was not empowered to execute the sale deed. That, however, was never the plea of the petitioner. The only basis, on which he seeks re-registration of the document, is that the transferee was not properly mentioned in the document. It may amount to stating the obvious, to mention that Section 23-A comes into picture, only to rectify the defects about the description of the executant of a document, and not the one, relating to the person, in whose favour the document is executed. In other words, the defect, even if genuine, in the description of transferees, can be cured through re-registration. Hence, there was absolutely no factual basis for the petitioner, to invoke Section 23-A of the Act, even assuming that he presented the application within four months from the date on which, he became aware of the so-called defect, in the document.

Learned counsel for the petitioner made reference to certain provisions of the Act, in view of the reply given to the petitioner.
They are, Sections 31 and 32 of the Act. In his reply, the
1st respondent stated that the executant of the document himself presented it, as required under Section 32 of Act. It is urged that the document was presented at the residence of the executant,
by availing the facility under Section 31, and the procedure prescribed

under Section 32 does not apply to a document, processed under Section 31. This slight distinction is of no relevance to the case on hand. The petitioner never pointed out any defect,
as to the method of registration, and this Court does not feel the necessity to examine the contention, in detail.

Sri Manikyala Rao, learned counsel for the petitioner, relied upon the judgments of this Court in ***Yella Reddy v. Subbi Reddy***[1],
to contend that the agreement of sale dated 01-07-1991 would have precedence over the sale deed dated 12-08-1991. To the same effect is the judgment of the Madhya Pradesh High Court in ***Ghasiram v. Shankarlal***[2].

The occasion to assess the relative superiority of an agreement of sale, on the one hand, and a subsequent registered sale deed,
on the other hand, arises in the context of reliefs, claimed under the Specific Relief Act. The rights, that accrue to an individual, on the strength of an agreement of sale, though not registered; cannot be defeated by executing a sale deed, at a subsequent point of time. These precedents would have been of some help to the petitioner, had he insisted that the agreement of sale dated 01-07-1991 was not discharged, and a sale deed is to be executed in consideration thereof. If the petitioner is of the view, that his rights under the agreement of sale are to be enforced, he has to file a suit for specific performance, if otherwise permissible in law. On the other hand, if he is of the view that the execution of the sale deed, dated 12-08-1991, is a sequel to the agreement of sale, there does not exist any conflict between the agreement of sale and a sale deed.

Further, the plea of the petitioner, that the entire consideration for the plot was arranged by him, and the 3rd respondent has misused the

confidence reposed in her; cannot be accepted in this writ petition, having regard to the limited nature of its scope. The petitioner acquiesces in the fact, that the sale deed dated
12-08-1991 had crystallized the rights under the agreement of sale dated 01-07-1991, but complains that, it was in favour of a different person. Even this requires necessary declaration by a competent Civil Court, and cannot be gone into in a writ petition.

The two other citations, relied upon by the petitioner, in ***Bhutkani Nath v. Kamaleswari***[3] and ***Yanala Malleshwari v. Ananthula Sayamma***[4]**,** are not relevant to the facts of this case.

For the foregoing reasons, the writ petition is dismissed. There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.22-08-2007

Note:
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[1] AIR 1954 Andhra 20

[2] AIR 1960 M.P. 3

[3] AIR 1972 Assam & Nagaland 15

[4] 2006 (6) ALT 523 (FB)